IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.572 of 2006

Mumbai Pradesh Arya Vidya Sabha ..Petitioners

Vs.

Arun Sitaram Kuwar & Ors. ..Respondents

WITH

WRIT PETITION NO.573 of 2006

Mumbai Pradesh Arya Vidya Sabha ..Petitioners

Vs.

Nandkishore Ramrao Goley & Ors. ..Respondents

Mr.A.Y.Sakare a/w Ms.Anupama Shah for the petitioners

Mr.Shaikh Nasir Masih for repsondent no.1

Mr.Imam Calcuttawala, A.G.P. for respondent nos.2 to 4

CORAM : S.U.KAMDAR, J
DATED : 13TH APRIL, 2006

P.C.:

1. Both these writ petitions are identical and therefore the same are disposed of by this common order and judgment. The facts in writ petition no.572 of 2006 are as under:

2. The petitioner is a technical educational institutions and was interalia running a course of technical education in the faculty of Fitters trade. The said course was for 2 years duration. The repsondent no.1 was appointed as a teacher in the said Fitters trade. The said petitioner institution is affiliated to the National Counsel for Vocational Training functions being a state agency. It is the case of the petitioners that the petitioners were not getting sufficient number of students for the said course and thus, the petitioners wanted to discontinue the said course. By a letter dt.28.5.05 the services of respondent no.1 were terminated w.e.f.31.7.05. The reason given for terminating the services of the repsondent no.1 was that for the academic year 2003-04, only four students have taken admission in the said faculty and thus it is not possible to run the said classes. Petitioners also relied upon a sanctioned order issued by the State Government granting permission to the petitioner institution for closing down the said fitters trade faculty. The said order of the State Government is

dt.12.4.05. The respondent challenged the said order of the Government granting permission to close down the said faculty by filing writ petition being Writ Petition No.2604 of 2005. By an order and judgment of the Division Bench dt.13.10.05, the respondent were relegated to an appeal which was already filed by them before the School Tribunal. In so far as challenge to the said permission was concerned, no relief was granted by the said Division Bench. Accordingly, respondent no.1 teacher prosecuted the said proceeding before the School Tribunal. The said Tribunal has by an impugned order allowed the appeal preferred by the respondent and the order of terminating the service of the respondent is set aside. The petitioners are also directed to reinstate the appellant to the post of instructor in Fitters trade with continuity of service and back wages.

3. Writ petition no.573 of 2006 is filed by an another teacher who was also appointed by the petitioners in the fitter trade faculty by an appointment order dt.2.9.85. His services were terminated by an order dt.28.4.04 i.e. prior to

the permission for the closure granted which has been granted on 12.4.05. The said termination order also has been set aside by the school tribunal by the impugned order in the said writ petition and directions are issued to the petitioner to reinstate the respondent in that petition with continuity of service and full back wages.

4. The petitioner management has interalia contended before me that the order passed by the Tribunal is per se perverse and without Jurisdiction inasmuchas while giving the findings, the Tribunal has in para 13 of the said judgment held that the Government G.R. dt.12.4.05 granting permission to the management to close down the fitter trade in the technical institution is bad in law and invalid and therefore the same is required to be quashed and set aside. On the basis of the aforesaid finding, the said order has been set aside by the school tribunal.

5. In so far as writ petition no.573 of 2005 is concerned, the tribunal has set aside the said

order on the additional ground i.e. that the notice of termination could not have been issued prior to the permission being obtained which has been obtained on 12.4.05 whereas an order of termination is dt.28.4.04. On the aforesaid ground the said appeals are allowed and the termination orders are set aside with the direction of reinstatement. Being aggrieved by the said orders passed by the School Tribunal, the petitioners have preferred the present writ petition. It has bene interalia contended that in so far as validity of G.R. is concerned which is dt.12.4.05, the School Tribunal has no Jurisdiction to entertain the validity of the said G.R. and that the Tribunal was bound to proceed on the footing that the G.R.dt.12.4.05 is legal and valid. My attention has been drawn to the provisions of section 9 of the Maharashtra Employees of Private Schools (Conditions of Service Regulation Act, 1977) which gives Jurisdiction to the appellate authority to determine the legality and validity of an order of dismissal or removal or reduction in rank of any of the employee in private school or in respect of supersession. It has been submitted that the

provisions of S.9 of the M.E.P.S. Act 77 circumscribes the Jurisdiction of the Tribunal and by going into the legality and validity of the G.R.dt.12.4.05 issued by the State Government, the School Tribunal has infact exceeded Jurisdiction vested in it under Section 9 of the Said Act. Provision of s.9 of the Maharashtra Employees of Private Schools (Condition of Service Regulation Act, 1977) reads as under:

> "9. Right of appeal to Tribunal to employees of private school:
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> (1) Notwithstanding anything contained in any law of contract for the time being in force, (any employee in private school,-
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> (a) who is dismissed or removed or whose services are otherwise terminated or who is reduced in rank, by the order passed by the Management; or
>
> (b)who is superseded by the Management while making an appointment to any post by promotion.
>
> and who is aggrieved, shall have a right of appeal against any order or supersession to the Tribunal constituted under section 8.)
>
> Provided that, no such appeal shall lie to the Tribunal in any case where the matter has already been decided by a court of competent jurisdiction or is pending before such Court, on the appointed date or where the order of dismissal, removal, otherwise

termination of service of reduction in rank was passed by the Management in any time before the 1st July, 1976.

(2) Such appeal shall be made by the employee to the Tribunal, within thirty days from the date of receipt by him of the order of dismissal, removal, otherwise termination of service or reduction in rank, as the case may be:

Provided that, where such order was made before the appointed date, such appeal may be made within sixty days from the said date.

(3) Notwithstanding anything contained in sub-section (2), the Tribunal may entertain an appeal made to it after the expiry of the said period of thirty or sixty days, as the case may be, if it is satisfied that the appellant has sufficient cause for not preferring the appeal within that period.

(4) Every appeal shall be accompanied by a fee of (Five Hundred rupees) which shall not be refunded and shall be credited to the Consolidated Fund of the state."

6. The next contention advanced by the learned counsel for the petitioners is that the validity of the Government Resolution was in fact challenged by filing writ petition in this court being writ petition no.2604 of 2005 and the Division Bench has by order and judgment dt.13.10.05 declined to entertain the challenge to the said G.R. and directed the respondents to prosecute the appeal

u.s.9 of the Maharashtra Employees of Private Schools (Condition of Service Regulation Act, 1977. In that view of the matter, when the High Court has not granted any relief pertaining to the validity of G.R. it is submitted that the School Tribunal could not have gone beyond the impugned orders passed by this court in writ petition and determine the validity of the said G.R. In any view, it has been submitted that the order passed by the authority in valid in law.

7. In so far as writ petition no.573 of 2006 is concerned in respect of additional contention that the notice of termination is dt.28.4.05 whereas G.R. is dt.12.4.05. It is submitted by the learned counsel for the petitioners that in any event, the termination can be given effect to w.e.f.12.4.05. Once the Government has granted termination of closing down the said trade then in that event, the termination order at least from the date of the said G.R. has to be treated as valid whereas the Tribunal has set aside the same and has directed reinstatement of the respondents. It has been further submitted that when there are no

students in the said trade and the Government having realised the said fact have granted permission to close down the said trade and in fact the said trade has been closed down by the petitioners then no order of reinstatement can be passed by the School Tribunal directing the petitioners to reinstate the respondents herein in the fitters trade which is no more conducted by the school authorities.

8. On the other hand the learned counsel for the respondents has submitted that the court while disposing of the writ petition being writ petition no.2604 of 2005 by an order dt.13.10.05 did not go in to the legality or validity of the Government Resolution and in fact expressly kept open to be determined by the School Tribunal. It has been submitted that in the light of the order dt.13.10.05, the Tribunal was justified in going into the legality and validity of the Government Resolution dt.12.4.05 and thus, accordingly rightly held that the said Government Resolution is invalid in law.

9. It has been further submitted that the order dt.13.10.05 cannot be treated as if that the challenge to the said Government Resolution has been negative by the court because the court has not given any such finding.

10. In so far as the question of termination is concerned, the learned counsel for the respondents has contended that the termination ought to be under rule 25A of the Maharashtra Employees of Private School Rules, 1981 and not under Rule 26 of the M.E.P.S. Rules, 1981 as has been done by the petitioners and therefore, also the termination order is bad in law.

11. The learned counsel for the petitioners has thereafter relied upon the judgment of the Full Bench in the case of Anil Dattatraya Ade Vs. Presiding Officer, School Tribunal, Amravati Region, Amravati and Ors reported in 2003 (2) MLR 525. In so far as the aforesaid judgment is concerned, the Full Bench has taken a view that all schools or institutions imparting technical or vocational education below degree level held to be

recognised by Director of Education and fall within the category of Private Schools and are governed by the provisions of M.E.P.S. Act 1977. There is no dispute in respect of the aforesaid proposition of law. In the present case also the petitioner school is governed by M.E.P.S. Act 1977. It is therefore,the State Government's permission is obtained on 12.4.05 for closing down of a particular trade.

12. Thereafter the learned counsel for the petitioners has relied upon an order dt.28.7.00 passed in writ petition no.1858 of 2000 in the case of Dr.Umeshchandra Shukla vs. Maharshi Dayanand Trust and Ors. I am of the view that the order is totally non applicable to the facts of the present case. That was the case where a person was a College teacher and was selected by the committee appointed by the University and ultimately was appointed on probation and thereafter by an order dt.20.3.99 the services were terminated on the ground that there were no sufficient students and an appeal was filed. However, the circulars were not considered by the Tribunal and therefore the

matter was remanded back to the Tribunal. There is no such case made out in the present case. In the present case, it is not a question of considering any circular issued by the Government. In the present case, the Tribunal has declared the Government Resolution as valid. There is no power in the Tribunal to declare any Government Resolution passed by the Government as in valid. To consider the Government Resolution and to consider the validity thereof are two different concepts and therefore the aforesaid judgment has no merits.

13. This leads me to the next contention that whether the termination is under rule 25A of the M.E.P.S. Rules, 1981 or rule 26 shall apply. On perusal of rule 25A makes it clear that it applies only when there is a closure of the school due to the abolition of posts whereas rule 26 applies to reduction in number of classes or fall in number of pupils, reduction in number of establishments. In the present case, there is no closure of school only one trade has been closed down by virtue of the fact that there is a fall in number of

students. In that light of the matter, in my opinion the rule 26 of the M.E.P.S.Rules, 1981 shall govern the matter and not rule 25A and therefore the order of termination passed by management is legal and valid and is in accordance with rule 26.

14. The next submission i.e. in writ petition no.573 of 2006 that the termination order is dt.28.4.05 and the permission to close down the trade is dt.12.4.05. In so far as said contention is concerned, I am of the opinion that the termination cannot come into effect till and until the permission is obtained by the petitioner from the government. The termination having received on 12.4.05, the order of termination would come into force only from 12.4.05. Thus, the repsondent in writ petition no.573 of 2006 will be entitled to benefits as if he was in service from 28.4.04 to the date of G.R. i.e.12.4.05 and his termination shall be legal and valid only from 12.4.05. In so far as writ petition no.572 of 2006 is concerned, admittedly the termination is subsequent to the said G.R. ie. 28.5.05 and therefore the

termination in that case would be effective from the date of termination order.

16. In that view of the matter, writ petition 572 of 2006 fails and the same is dismissed. In so far as writ petition 573 of 2006 is concerned, the same is partly allowed. Order passed by the Tribunal is set aside and substituted by directing the petitioners to pay the respondent all the salaries and wages as he is entitled to upto 12.4.05 with all consequential benefits. However,there shall be no order as to costs in both the petitions.